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June 11, 2010

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Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 6276

Dear Mr. Jordan:

In between sending out press releases attacking the character and legally permissible actions of Michael Steele, Ken Weiser, the Republican National Committee, the Michigan Republican State Committee, and most egregiously, seventeen private citizens, Michigan Democratic Party Chairman Mark Brewer took the time to file a paradigmatic frivolous complaint. His complaint must be promptly dismissed for failure to state any violation of law.

As counsel for the Republican National Committee ("RNC"), for RNC Chairman Michael Steele, and for RNC Treasurer Randall Pullen in his official capacity (the "RNC Respondents"), I write to respond to the complaint filed by Mr. Brewer ("Complainant") designated as Matter Under Review 6276 (the "Complaint"). The Commission simply cannot find Reason to Believe ("RTB") that any of the RNC Respondents violated any provision of federal election law based on a complaint that was itself based on nothing more than an unverified anonymous source's allegations posted in a story on an alternative media website. While an investigation would definitively exonerate the Respondents of any wrongdoing, forcing them to spend time, money and human resources enduring such an investigation would be unjust and would only encourage an onslaught of similarly unsubstantiated and abusive complaints that would force political committees and individuals, as well as the Federal Election Commission ("Commission" or "FEC"), to waste resources on meritless claims such as this one.

I. The Complaint Must Be Dismissed for Failure to State a Violation.

The Complaint must be summarily dismissed because it fails to meet even the minimum threshold of "contain[ing] a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction." 2 U.S.C. § 437g(a)(1), 11 C.F.R. § 111.4(b). Even assuming all the facts alleged in the Complaint and the web article are true, these facts do not amount to a violation of law by the RNC Respondents.

The Complaint alleges, in perfectly conclusory fashion, that "Weiser, MRP, Steele, RNC and the contributors should be found to have knowingly and willfully violated the FECA by soliciting, contributing and/or receiving excessive contributions." Yet, all of the transactions described in the

Complaint are facially legal. An individual is permitted to contribute $30,400 per calendar year to a national political party committee, 11 C.F.R. § 110.1(c)(1), and a national political party committee is permitted to make unlimited transfers to a state political party committee of its own party. 11 C.F.R. § 110.3(c)(1). The Complaint does not so much as intimate that any individual named in the Complaint contributed more than $30,400 to the RNC, and obviously there is no limit for the RNC to exceed with respect to transfers to the MRP. Thus, the only persons who could be found to be attempting to "evade federal contribution limits to the MRP" are the individually named contributors named in the Complaint. Yet the Complaint does not even state whether any of the contributors sent any money to the MRP in 2009. Presumably, then, the $30,400 contributions to the RNC are themselves ostensibly contributions to the MRP.

The Complaint, however, includes no alleged facts that would transform a set of independent transactions – seventeen separate contributions to the RNC and two separate transfers from the RNC to the MRP – into an illegal scheme to evade the $10,000 state party political committee contribution limits under 2 U.S.C. §441a(a)(1)(D). And where every transaction is permissible on its face, there can be no RTB rooted in Complainant's mere inferences and conjecture. MUR 5406 (Hynes for Senate), First General Counsel's Report approved Jan. 27, 2005 at 7-8, MUR 5304 (Cardoza for Congress), First General Counsel's Report approved Jan. 21, 2004) at 8-9.

Faced with no stated legal violation in the Complaint, RNC Respondents are left to search for some illusory violation in order to argue that it did not happen. Perhaps it can be found in the specter of a secret deal that was allegedly struck between the RNC and the MRP, that the RNC would send back to the MRP any money that the MRP raised for the RNC. Yet, even if such an arrangement were made, it would not be illegal. No provision of the Federal Election Campaign Act of of 1971, as amended ("FECA"), or the regulations promulgated thereunder prohibit an arrangement by which a national party committee promises to transfer funds to a state party committee money based on how much is raised for the national party committee in that state.

Perhaps the violation could be found in the speculation by the anonymous "source" as to the contributors' motive (which, allegedly, was the same for each of them): that "they would be able to give more to the Michigan state party than the federal limit of 10k." Yet the complainant cannot find much help here either. Even if this anonymous oracle quoted in the web article could divine the motives of seventeen contributors, the Complaint does not sufficiently plead that the donors' alleged intent to send money ultimately to the MRP was satisfied because it does not even state facts evidencing that *their own* contributions were the funds that the RNC transferred to the MRP. *See* MUR 5445 (Quentin Nesbitt), First General Counsel's Report dated February 2, 2005 at 11-12 and Commission Certification dated February 8, 2005; MUR 5019 (Keystone Corp.), First General Counsel's Report approved Feb. 5, 2001 at 27-28.[1]

The Complaint quite obviously cannot be sustained on a theory of either earmarking under 11 C.F.R. §110.6 or excessive contributions to committees supporting the same candidate under 11 C.F.R. §110.1(h) as these provisions only apply when the ultimate recipient of the allegedly excessive contribution is a candidate – not a state party committee. Nor can a theory of contribution in the name of another under 2 U.S.C. § 441f and11 C.F.R. § 110.4(b) be applied as the RNC disbursements to MRP are transfers and not contributions. The RNC could only conceivably be implicated under 11 C.F.R.

[1] Disclosure reports indicate the following: The RNC had $8,421,947.96 cash on hand at the end of 2009. It raised $10,530,298.96 and disbursed $9,469,361.45 in January 2010 and had $9,482,877.47 cash on hand at the end of January. It raised $7,688,126.45 and disbursed $7,708,240.61 in February 2010 and had $9,462,763.31 cash on hand at the end of February. Against this backdrop, Complainant has made no effort to show any basis to believe that the Michigan contributors' dollars were the funds that ended up in the MRP's federal account.

§110.4(b)(ii), which prohibits knowingly allowing one's name to be used to effect another person's contribution or perhaps §110.4(b)(iii), which prohibits knowingly assisting another person in making a contribution in the name of another. But an RTB finding on either of these issues would require evidence that the contributors knew their contributions to the RNC would be sent to the MRP, *see* MUR 5968 (John Shadegg's Friends), Factual and Legal Analysis approved November 10, 2008 at 7, as well as evidence that the RNC knew the contributors were attempting to contribute in the name of another. 2 U.S.C. § 441f, 11 C.F.R. §§110.4(b)(ii),(iii) (each containing a knowledge requirement). The Complaint fails to allege that any such evidence exists. As discussed *infra*, there is no such evidence but rather compelling evidence to the contrary.[2]

Complainant's final act of straw-grasping concerns the supposedly suspicious change in contribution pattern by five of the seventeen contributors. The RNC Respondents do not dispute that four of the contributors had never contributed to the RNC before. Indeed, they were among 164,890 first-time RNC contributors in 2009. Nor do the RNC Respondents dispute that one contributor had never maxed out to the RNC before. She is among 206,919 individuals who contributed more to the RNC in 2009 than they had in any previous year. It is not clear why these five were singled out as suspicious, just as it is not clear why twelve contributors who had maxed out to the RNC in past years were motivated to max out in 2009 only because they were part of a scheme hatched by Ron Weiser and Michael Steele earlier that year. Nor is it evident why the seventeen contributors named in the complaint, as opposed to any of the other 28,270 persons in Michigan who contributed to the RNC last year, should fall under suspicion.[3]

In any case, regardless of the contributors' motives, the Complaint contains no allegation that the RNC Respondents knew what these motives were. There is no allegation as to what Chairman Weiser or any other representative of the MRP may have told any of the contributors or that the contributors had any knowledge or control of how the RNC would use their contributions, much less that Chairman Steele or any representative of the RNC had any such discussion with any of the contributors. Without such an allegation, there can be no reason to believe that the RNC took part in any scheme to help the contributors evade the federal contribution limits.

Mr. Brewer's filing is the archetype improper complaint that the Commission has made clear cannot result in a finding of RTB because the facts alleged fail to support a legal conclusion that a violation has occurred. As the Commission has stated, "unwarranted legal conclusions from asserted facts...or mere speculation...will not be accepted as true." MUR 4960 (Clinton for Senate Exploratory Committee), Statement of Reasons of Commissioners Mason, Sandstrom, Smith and Thomas, December 21, 2000; *see also* MUR 6056 (Protect Colorado Jobs Inc.), Statement of Reasons of Commissioners Petersen, Hunter, and McGahn dated June 2, 2009 ("The RTB standard does not allow a Complainant to present mere allegations that the Act has been violated and request that the Commission undertake an investigation to determine whether there are facts to support the charges"). For these reasons, the Complaint must be dismissed.

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[2] Moreover, even if the contributors could infer or had expectations of how their contributions to the RNC would be used – and the Complaint contains no evidence of even this, inferences and expectations do not constitute knowledge. MUR 5968 (John Shadegg's Friends), Factual and Legal Analysis approved November 10, 2008 at 7, MUR 5881 (Citizens Club for Growth), Factual and Legal Analysis approved on August 8, 2007 at 9, MUR 5732 (Matt Brown for U.S. Senate), Factual and Legal Analysis approved on March 20, 2007 at 11; MUR 5445 (Quentin Nesbitt), First General Counsel's Report dated Feb 2, 2005 at 11-12 and Commission Certification dated Feb. 8, 2005.

[3] Complainant also suggests that the December 23 and December 31 timing of the contributions should cast suspicion on the contributors' motives, but he fails to explain what differentiates these contributions from the remainder of the 1,397 contributions from Michigan and 51,396 contributions from across the nation that the RNC received between December 23 and December 31.

II. Even if the Complaint Stated a Violation, the Trifling Evidence Complainant Offers is Overwhelmed by Contrary Evidence.

Even if the facts alleged in the Complaint described a violation of federal election law, and the Commission therefore deemed it appropriate to examine their veracity, there is still no basis for a finding of a reason to believe that the RNC Respondents committed any violation. The evidence laid out herein, including the attached affidavits, should be deemed more compelling than that contained in the Complaint; thus, the Complaint should be dismissed. *See* MUR 4960 Statement of Reasons of Commissioners Mason, Sandstrom, Smith, and Thomas ("a complaint may be dismissed if it consists of factual allegations that are refuted with sufficiently compelling evidence provided in the response to the complaint.")

The Complaint contains factual allegations about donor history that are not in dispute, but the facts on which legal liability would hinge are those related to the supposedly illegal scheme that Complainant alleges existed in the form of an agreement between Chairman Weiser and Chairman Steele, which, in order to be even potentially impermissible, would have had to include the contributors, who allegedly were motivated to contribute to the RNC to circumvent the state party federal contribution limit. On one side of the equation sits, rather than Complainant's personal knowledge, merely a single story in the alternative media that relies on anonymous quotes. If this is enough to constitute a sufficient basis for Complainant's belief in his allegations under U.S.C. § 437g(a)(1) and 11 C.F.R. 111.4(d)(2), the pleading standards for complaints are rendered meaningless. On the other side of the instrument equation stands sworn evidence that no such scheme existed.

If the RNC were part of a scheme to help donors circumvent the state party contribution limit, it would need to know that donors were trying to circumvent the limit, as discussed *supra*. No such knowledge existed. Chairman Steele, one of the alleged perpetrators of this secret scheme, has provided a sworn affidavit stating that he never discussed with any of the contributors what their contributions would be used for and that he has no knowledge of what they were told when solicited for the contributions or what their motives for contributing were. Steele Aff.¶ ¶ 2,4,5 and 6

Similarly, the two RNC finance employees best positioned to know if the contributors were motivated to contribute to the RNC in order to circumvent the limit to the MRP – Lindsay Drath, Director of Team 100 and Regents, and Allyson Schmeiser, her deputy – have provided sworn affidavits stating that they have no knowledge of what the contributors were told by Chairman Weiser or any other agent of MRP, or what their motivation for contributing was. Drath Aff.¶ ¶ 8 and 9; Schmeiser Aff. .¶ ¶ 8 and 9. They never discussed these issues with any of the contributors (Drath Aff. ¶¶ 6 and 7; Schmeiser Aff. Aff. ¶¶ 6 and 7) and saw no notation on any payment or correspondence from the contributors expressing an intent, direction or condition that their contributions be sent to the MRP. Drath Aff.¶ 5 and Schmeiser Aff.¶ 5.

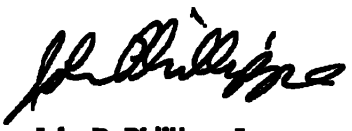
III. Conclusion

As far as RNC Respondents can tell, there is no basis in fact or law to sustain the Complaint against Ron Weiser, the MRP or the contributors. And the case against the RNC Respondents – which requires the additional showing of knowledge on the RNC's part – rests on not mere shaky ground but a veritable fault line. Absent evidence that the contributors intended that their contributions ultimately make their way to the MRP (regardless of any purported arrangement between Ron Weiser and Michael Steele or their respective party committees) there is no reason to believe that the RNC Respondents were part of any illegal scheme to circumvent federal contribution limits. The meager facts alleged in the

Complaint are controverted in pertinent part by sworn evidence. Even if the allegations were true, they would not constitute a violation of FECA or the regulations.

Moving forward with a finding of reason to believe in this matter would require an evisceration of the statutory, regulatory and precedential standards governing the enforcement process. Because the facts described in the Complaint do not describe a violation and, in any event, are overwhelmed by sworn, detailed rebuttal evidence, there is no basis to move forward with an investigation. *See* MUR 5520 (Republican Party of Louisiana), First General Counsel's Report approved May 31, 2010 at 9. The RNC Respondents therefore urge prompt dismissal of the Complaint.

Sincerely,



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